Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Connect America Fund	)	WC Docket No. 10-90
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
	)	
High-Cost Universal Service Support	)	WC Docket No. 05-337
	)	
Developing a Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link-Up	)	WC Docket No. 03-109
	)	
Universal Service Reform – Mobility Fund	)	WT Docket No. 10-208

OPPOSITION AND COMMENTS OF CTIA–THE WIRELESS ASSOCIATION®

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I. INTRODUCTION AND SUMMARY

CTIA–The Wireless Association® ("CTIA") commends the Commission's efforts late last year to reform comprehensively its universal service and intercarrier compensation rules,[1] and takes this opportunity to respond to points made in several Petitions for Reconsideration and/or Clarification filed in this docket. As CTIA explains below, the Commission should affirm its well-established intraMTA rule to govern traffic between wireless providers and local

[1] *Connect America Fund, A National Broadband Plan for Our Future, Establishing Just and Reasonable Rates for Local Exchange Carriers, High-Cost Universal Service Support, Developing an Unified Intercarrier Compensation Regime, Federal-State Joint Board on Universal Service, Lifeline and Link-Up, Universal Service Reform – Mobility Fund,* WC Docket No. 10-90, GN Docket No. 09-51, WC Docket No. 07-135, WC Docket No. 05-337, CC Docket No. 01-92, CC Docket No. 96-45, WC Docket No. 03-109, WT Docket No. 10-208, Report and Order and FNPRM of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) ("*Order*").

exchange carriers ("LECs"), strengthen its traffic pumping rules, and decline invitations to create "designer auctions" of Advanced Wireless Services spectrum.

First, the Commission should reaffirm its holding that the intraMTA rule applies to all intraMTA wireless traffic, including traffic carried in part by interexchange carriers ("IXCs"). Several organizations representing rural incumbent local exchange carriers ("rural LECs") seek reconsideration of this decision. Their arguments do not warrant consideration, because they were made in the record below and resolved in the *Order*. Moreover, the arguments are substantively meritless, as the *Order* explained.

Second, as suggested by petitioners Sprint and MetroPCS, the Commission should take several steps to strengthen its new rules regarding access stimulation. In particular, the Commission should further reduce the access rates that may be charged by carriers meeting the new triggers, to $0.0007 per minute at most, to ensure that incentives to engage in arbitrage truly are eliminated. The Commission also should take various steps to prevent the gaming of its new rules. To this end, it should (1) take further action to reduce rates when a traffic-pumping competitive carrier's volumes exceed those of the incumbent carrier against whose rates the competitor benchmarks its own; (2) reduce the timeframe in which carriers meeting the trigger must file new tariffs from 45 days to 15 days; and (3) require traffic pumpers to maintain the reduced rates for a sufficient period of time to help ensure that they disgorge any excessive profits. Finally, the Commission should specify that its new traffic pumping rules apply to intrastate access rates as well as interstate rates.

Third, the Commission should decline NTCH, Inc.'s invitation to modify the rules for the Advanced Wireless Services spectrum in this proceeding. Those rules are the subject of other Commission proceedings, and any such modifications in the present proceeding would be

procedurally improper, given the absence of any notice that these issues would be considered. In any event, the modifications that NTCH seeks would be unwise as a matter of spectrum policy.

II. THE COMMISSION SHOULD AFFIRM ITS DECISION REGARDING INTRAMTA TRAFFIC DELIVERED BY IXCS.

In the *Order*, the Commission correctly affirmed that the intraMTA rule applies to traffic carried by IXCs. In their joint petition, the National Exchange Carrier Association, the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (together, the "Rural ILEC Petitioners") again ask the Commission to reverse itself regarding the application of the intraMTA rule to traffic carried by IXCs.[2] For reasons discussed below, the Commission should decline to do so.

Since 1996, the Commission's rules have provided unequivocally that intraMTA traffic between LECs and CMRS carriers is treated as "local" and not subject to access charges.[3] In the lead-up to the *Order's* adoption, Vantage Point Solutions ("Vantage") submitted a letter citing alleged "difficulties associated with the implementation of intraMTA local calling" between LECs and CMRS providers, and urging the Commission to "proceed with substantial caution" when "handling the rating and routing of intraMTA calls" that involve an IXC.[4] The *Order* resolved various disputes regarding application of the intraMTA rule, including rejecting the

[2] *See* National Exchange Carrier Association, Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance, Petition for Reconsideration and Clarification, WC Docket No. 10-90 et al. at 36-37 (filed Dec. 29, 2011) ("Rural ILEC PFR"). All petitions for reconsideration or clarification of the *Order* submitted on December 29, 2011, will be short cited herein.

[3] *See* 47 C.F.R. § 51.701(b)(2).

[4] Letter from Larry D. Thompson, CEO, Vantage Point Solutions, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90 et al., at 1, 3 (filed Oct. 21, 2011) ("Vantage Point Ex Parte Letter").

concerns raised by Vantage. It held that "alleged 'difficulties associated with the implementation of intraMTA local calling' between LECs and CMRS providers" in connection with calls involving IXCs "do not warrant" an exception from the intraMTA rule for such calls.[5]

The Rural ILEC Petitioners seek reconsideration of this conclusion regarding IXC-carried traffic, claiming that it "will create significant billing and call flow concerns."[6] As discussed below, the Commission has already faced the issues raised by the Rural ILEC Petitions and has squarely addressed them. The Commission should once again reject the Rural ILEC Petitioners' arguments for both procedural and substantive reasons.

A. The Rural ILEC PFR Fails to Satisfy the Procedural Criteria for Reconsideration.

As an initial matter, the Rural ILEC Petitioners have failed to satisfy the procedural criteria for reconsideration. Under Commission rules, a petition for reconsideration of a rulemaking order "plainly do[es] not warrant consideration by the Commission" if it "[r]el[ies] on arguments that have been fully considered and rejected by the Commission within the same proceeding."[7] Here, the arguments raised by the Rural ILEC Petitioners were the very same arguments considered and rejected in the *Order*. The Commission responded to the argument that "there is no realistic way" for a terminating LEC to determine whether IXC-delivered traffic

[5] *Order* ¶ 1007 n.2132.

[6] Rural ILEC PFR at 37 ("When a terminating RLEC receives intraMTA traffic routed through an IXC, there is no realistic way for the carrier to determine whether such calls are in fact CMRS-originated or whether they are inter- or intra- MTA. In addition, it should be recognized that the CMRS provider has made an affirmative decision to route calls through an IXC rather than seeking a local interconnection agreement with the LEC. Therefore the Commission should reconsider its denial of this request and clarify that such traffic is subject to access charges notwithstanding potential qualification for reciprocal compensation rates under the intraMTA rule.").

[7] 47 C.F.R. § 1.429(l)(3).

is subject to the intraMTA rule by noting that the FCC had addressed that issue in 1996 (when it first adopted the intraMTA rule), finding that parties may extrapolate from traffic studies and samples to estimate what portion of interexchange traffic is intraMTA.[8]

Likewise, the Commission, in issuing the *Order*, already had before it the argument that CMRS providers "[have] made an affirmative choice to route the calls through an IXC."[9] In response, the Commission pointed out that "many incumbent LECs have already … extended reciprocal compensation arrangements with CMRS providers to intraMTA traffic without regard to whether a call is routed through interexchange carriers" – *i.e.*, irrespective of how the call was routed or who determined its routing. Thus, the *Order* considered and rejected both of the arguments raised by the Rural ILEC Petitioners. There is no basis for considering their repetitious request here.

B. The Rural ILEC PFR's Argument Lacks Substantive Merit.

The Rural ILEC Petition fails to demonstrate that reconsideration is warranted. The Commission's original rationale for adopting the intraMTA rule still holds: wireless carriers are subject to federally prescribed local calling areas larger than traditional state-prescribed local calling areas.[10] There is no rationale for applying access charges to intraMTA traffic that

[8] *See Order* ¶ 1007 n.2132; *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16017-18 ¶ 1044 (1996) ("*Local Competition Order*"); *see also* Rural ILEC PFR at 37.

[9] *See* Letter from Michael R. Romano, Sr. Vice President – Policy, National Telecommunications Cooperative Ass'n, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 *et al.*, at 2 (filed Dec. 9, 2011); *see also* Vantage Point Ex Parte Letter at 1 (citing "choice by the CMRS carrier" to route traffic through IXC).

[10] *Local Competition Order*, 11 FCC Rcd at 16016 ¶ 1043 ("As noted above, CMRS providers' license areas are established under federal rules, and in many cases are larger than the local exchange service areas that state commissions have established for incumbent LECs' local service areas. We reiterate that traffic between an incumbent LEC and a CMRS network that

extends beyond the ILEC local calling area, particularly when this traffic has never been subjected to access charges before – and when the Commission is working to transition all traffic away from the access charge model and toward a reciprocal compensation regime.

Nor is there any merit to the Rural ILEC Petitioners' claim that difficulties in determining the jurisdiction of IXC-carrier intraMTA calls warrant the application of access charges to such calls.[11] As the Commission noted in the 1996 *Local Competition Order*[12] and repeated in the instant *Order*,[13] carriers remain free to rely on jurisdictional factors or other tools to estimate the percentage of IXC-delivered traffic that is, in fact, intraMTA traffic. Parties to interconnection agreements commonly use such tools to allocate traffic in instances where it is not feasible to determine allocations in real time based on switch or billing records. Jurisdictional factors may be based on periodic traffic studies, estimates, or other considerations as agreed by the parties. The petitioners provide no explanation as to why such traffic allocation factors , on which carriers routinely rely in related contexts, could not be used to assess IXC-delivered wireless traffic.

Furthermore, provision of Calling Party Number ("CPN") or SS7 Charge Number ("CN") information, as required by the *Order*, provides "information helpful in identifying carriers sending terminating traffic."[14] Thus, with CPN or CN data, as well as industry billing

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originates and terminates within the same MTA (defined based on the parties' locations at the beginning of the call) is subject to transport and termination rates under section 251(b)(5), rather than interstate or intrastate access charges.").

[11] Rural ILEC PFR at 37.

[12] *Local Competition Order*, 11 FCC Rcd at 16017-18 ¶ 1044.

[13] *Order* ¶ 1007 n.2132.

[14] *Id.* ¶ 725.

information typically provided by tandem service providers, terminating carriers should have sufficient data to determine the identity of the originating carrier, even for calls routed through multiple carriers, even in the absence of traffic studies or negotiated factors.[15]

Moreover, the approach urged by the Rural ILEC Petitioners would contravene well-established Commission precedent by basing the applicable compensation framework *not* on the geographic endpoints of the call, but rather on the means by which the call happened to be routed. Under the Commission's long-standing end-to-end jurisdictional analysis, whether traffic is subject to reciprocal compensation, intrastate access, or interstate access depends solely on whether its geographic origination and termination points are (1) within the same local calling area or (for wireless calls) MTA, (2) in different local calling areas/MTAs but in the same state, or (3) in different states (and, also, in the case of CMRS traffic, different MTAs).[16]

The outcome urged by the Rural ILEC Petitioners would upend this framework, applying the reciprocal compensation framework to intraMTA traffic delivered without any IXC involvement but the access charge framework to traffic routed through an IXC. Even a call with

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[15] *Id.*

[16] *See, e.g., AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 4826, 4835 ¶ 28 (2005) ("[W]e determine the jurisdiction of calls made with [a telecommunications] service based on an end-to-end analysis, without regard to the routing of the call or the geographic characteristics of the underlying telecommunications."). Notably, this jurisdictional analysis is focused on geographic endpoints, and not the NPA/NXX codes associated with the telephone numbers of the calling and called parties. *See, e.g., Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, Memorandum Opinion and Order, 19 FCC Rcd 22404, 22413 ¶ 17 (noting that, in evaluating jurisdiction of a call, "the Commission has traditionally applied its so-called 'end-to-end analysis' based on the *physical* end points of the communication…., beginning with the end point at the inception of a communication to the end point at its completion" (emphasis added)); *id.* at 22419 ¶ 24 ("[T]he Commission has historically applied the *geographic* 'end-to-end' analysis to distinguish interstate from intrastate communications." (emphasis added)).

the exact same geographic endpoints would be treated differently depending on whether it was handed to an IXC along the way. Indeed, as the *Order* makes clear, NECA – one of the three Rural ILEC Petitioners – itself stressed the importance of maintaining the end-to-end analysis in applying the intraMTA rule in contexts where one or more third parties carries traffic between the originating and terminating carriers.[17] By abandoning the objective geographic endpoint criterion underlying the intraMTA rule, adoption of the Rural ILEC approach would create endless opportunities for gaming and abuse through disadvantaging certain types of interconnection agreements and requiring traffic to be routed through IXCs. The Commission should not establish rules that serve no ascertainable purpose other than to create new opportunities for gaming and regulatory arbitrage in order to raise prices for competitors and consumers.

Thus, for procedural, substantive and policy reasons, the Commission should reject the arguments raised by the Rural ILEC Petitioners with respect to the intraMTA rule.

III. THE COMMISSION SHOULD STRENGTHEN ITS SAFEGUARDS AGAINST TRAFFIC PUMPING

The Commission should also strengthen its rules aimed at curbing traffic pumping by adopting proposals made by Sprint and MetroPCS, as discussed below.

CTIA commends the Commission for recognizing the pernicious impact of traffic pumping and adopting measures to combat it. As the *Order* recognizes, traffic pumping has cost carriers (and, ultimately, consumers) billions of dollars over the past five years, depleting capital

[17] *See Order* ¶ 1006 ("[W]e agree with NECA that the 're-origination' of a call over a wireless link in the middle of the call path does not convert a wireline-originated call into a CMRS-originated call for purposes of reciprocal compensation ….").

that otherwise could be used for broadband deployment and other network investments.[18] CTIA agrees with the Commission that this arbitrage scheme must be stopped in its tracks.

CTIA also applauds the clarifications to the traffic pumping rules set out in the Wireline Competition Bureau's ("WCB's") February 3, 2012 Order.[19] Consistent with requests made by Sprint and MetroPCS, WCB properly clarified that (1) nothing in the *Order* overturned previous rulings and existing standards for determining whether pumped traffic is access traffic at all, such as those set out in the *Sprint v. Northern Valley*, *Qwest v. Northern Valley*, and *Qwest v. Farmers and Merchants* matters;[20] and (2) "any arrangement between a LEC and another party, including affiliates, that results in the generation of switched access traffic to the LEC and provides for the net payment of consideration of any kind, whether fixed fee or otherwise, to the other party, including an affiliate, is considered to be "based upon the billing or collection of access charges."[21] These clarifications are significant and will help to suppress access-stimulation schemes.

In order to ensure that the new rules are effective at combating traffic pumping, however, the Commission should also reconsider certain aspects of the new rules. Sprint and MetroPCS each filed petitions seeking reconsideration of aspects of the Commission's new framework,

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[18] *See Order* ¶ 664.

[19] *Connect America Fund*, WC Docket No. 09-10 et al., DA 12-147, Order (WCB rel. Feb. 3, 2012) ("*February 3 Order*").

[20] *Id.* ¶ 25 & n.69 (*citing Qwest Communications Corp. v. Farmers and Merchants Mutual Telephone Co.*, Second Order on Reconsideration, 24 FCC Rcd 14801 (2009); *Qwest Communications Corp. v. Northern Valley Communications*, Memorandum Opinion and Order, 26 FCC Rcd 8332 (2011), *reconsideration denied*, 26 FCC Rcd 14520 (2011); *Sprint Communications Company, L.P. v. Northern Valley Communications*, 26 FCC Rcd 10780 (2011), *reconsideration denied*, 26 FCC Rcd 16549 (2011)).

[21] *Id.* ¶ 27

meant to "make the rules more effective and to minimize pumpers' ability to game the system at the expense of the public interest."[22] CTIA encourages the Commission to adopt these proposals, as described below, in order to achieve its own goal of addressing uneconomic and harmful traffic pumping schemes.

First, as Sprint requests, the Commission should reconsider the applicable rate remedy that will apply when the traffic pumping triggers are met. Under the terms of the *Order*, when a competitive local exchange carrier ("LEC") meets the applicable triggers, it must file a new tariff reflecting "the lowest interstate switched access rate of a price cap LEC in the state."[23]

Unfortunately, at these rates, traffic pumping could still be profitable, and providers might retain incentives to continue their access stimulation schemes, extracting unreasonable rents from other network users and perpetuating the inefficient use of network resources. Needless to say, in order to remain attractive, traffic pumping need not be as profitable as it once was; it need only provide the LEC with revenues that exceed its (negligible) incremental costs. This obviously would be a perverse outcome – that traffic pumping continues, but now operates not outside the Commission's rules, but instead would be validated by the new rules.

For this reason, the Commission should adopt Sprint's proposal to reduce the rate that applies when a LEC meets the traffic-pumping triggers. CTIA has advocated that, where a LEC meets the traffic pumping triggers, the applicable default compensation methodology should be bill and keep. The Commission has adopted bill and keep as the reasonable and compensatory methodology for all traffic, and there is no basis to permit a higher rate for stimulated traffic, even on an interim basis. CTIA thus agrees with Sprint that the Commission should reconsider

[22] Sprint PFR at 1. *See also* MetroPCS PFR at 8-12.

[23] *See Order* ¶ 690; *see generally id.* ¶¶ 680-87.

its rate remedy. In the event the Commission declines to apply a default bill and keep methodology to this traffic, it should at a minimum set rates at no higher than $0.0007 per minute, as proposed by Sprint.[24]

Second, the Commission should revise its rules to prevent gaming of its new framework. For example, if a competitive LEC's stimulated traffic volume exceeds the traffic volume of the price cap LEC against whose rates it would benchmark its rates, the Commission should *in all cases* prescribe further rate reductions, unless the CLEC voluntarily reduces all of its per-minute rates to $0.0007 per minute (or bill and keep), as proposed by Sprint. It should further establish a true-up mechanism to ensure that the LEC's rates are just and reasonable for the entire monitoring period.[25]

Moreover, CTIA agrees with Sprint that the Commission should reconsider its decision to allow LECs that meet the traffic pumping triggers 45 days to amend their tariffs.[26] This period is far too long, given the well documented harms imposed by traffic pumping. Moreover, traffic-pumping LECs will, by definition, be aware that they are engaged in traffic pumping, so there will be no surprise in their "discovery" that they have met the triggers. Further, the LEC need not drastically revise its access tariff; rather, it will only need to revise its rates. Under these circumstances, there is simply no reason to permit traffic-pumping LECs to continue over-earning for 45 full days. Instead, the Commission should afford traffic pumpers only 15 days to revise their tariffs after they meet the new triggers.[27]

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[24] Sprint PFR at 7-8.

[25] *See id.* at 9.

[26] *See Order* ¶¶ 680, 681, 685, 691.

[27] *See generally* Sprint PFR at 11.

Sprint also asks the Commission to revise its rules to ensure that LECs that terminate access stimulation contracts are not permitted to revert immediately to otherwise-applicable rate-setting procedures. CTIA agrees that if bad-actor LECs are permitted to engage in profit-generating traffic pumping until their behavior satisfies the triggers, and are then permitted to cease their arbitrage activities and revert to more traditional rate-setting methodologies, the Commission will have left a potentially significant measure of profit in traffic pumping behavior. In order to deter traffic pumping, the Commission should require entities that meet the triggers to apply and retain the Commission-prescribed rate (whether that is the rate discussed in the *Order*, a $0.0007 per minute rate, or a bill and keep methodology) for a pre-established period of time after the triggers have been met. Assuming the rate has been set at an appropriately low level, this approach will effectively force the traffic pumper to disgorge its ill-gotten profits, offsetting their prior over-earnings – and will help persuade LECs against engaging in traffic pumping in the first place.[28]

Third, CTIA agrees with MetroPCS that the Commission should extend its traffic-pumping rules to cover intrastate access traffic.[29] The *Order* indicates that the new traffic pumping rules are meant to address interstate traffic-pumping schemes.[30] There is no reason that intrastate access rates should remain immune from the remedies imposed *vis-à-vis* interstate rates, particularly given that intrastate access rates are often far higher than interstate rates. If the Commission's current regime remained in place unchanged, a traffic pumping LEC could well

[28] *See id.* at 10.

[29] *See* MetroPCS PFR at 16-20.

[30] *See Order* ¶ 662 ("The record confirms the need for prompt Commission action to address the adverse effects of access stimulation and to help ensure that *interstate* switched access rates remain just and reasonable, as required by section 201(b) of the Act." (emphasis added)).

continue to profit handsomely on the basis of intrastate toll traffic even after its intrastate rates were reduced. There is no reason to leave this disparity in place: the Commission has brought all access traffic within the scope of Section 251(b)(5), eliminating any previous limitation on its authority to address intrastate access rates.[31] It should exercise its authority in this area and subject intrastate access rates to the same remedies as interstate rates.[32]

IV. THE COMMISSION SHOULD ADDRESS DECISIONS REGARDING AWS-3 SPECTRUM IN OTHER PROCEEDINGS

CTIA urges the Commission to decline the request of NTCH, Inc. ("NTCH"), which asks the Commission to adopt changes to its rules regarding the use of Advanced Wireless Services spectrum in the 2155-2175 MHz band (the "AWS-3" band).[33] NTCH suggests that the Commission use the reconsideration process in this universal service proceeding to "prioritiz[e]" the AWS-3 spectrum for new entrants in unserved areas "[b]y skewing the AWS-3 auction in the direction of competing carriers" and by "simply barring or severely handicapping companies who already own significant spectrum in a given market from acquiring even more."[34] It would be improper for the Commission to consider these arguments in the present proceeding.

As an initial matter, the Commission provided no notice that it might use the universal service transformation proceeding as a vehicle to make decisions that would affect the ability of

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[31] *See id.* ¶ 762.

[32] Moreover, as the *Order* points out, at ¶ 779, Section 332(c) of the Communications Act of 1934, 47 U.S.C. § 332(c), provides authority over intercarrier rates for all intrastate traffic exchanged between CMRS carriers and LECs (citing, *inter alia*, *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 800 n.21 (8th Cir. 1997), *vacated and remanded in part on other grounds sub nom. AT&T v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), as to reciprocal compensation rates for CMRS carriers).

[33] *See* NTCH Petition for Reconsideration, WC Docket No. 10-90, et al., at 13 (filed Dec. 29, 2011).

[34] *Id.* at 3, 13-14.

"companies who already own significant spectrum" – or the ability of anyone else for that matter – to acquire spectrum being put up for bid. Any such decisions therefore are beyond the scope of this proceeding, and it would be inappropriate for the Commission to employ the instant reconsideration of the *Order* to make decisions regarding which auction policies to apply to this band.[35]

Regardless of whether the Commission legally could adopt NTCH's proposal, doing so would be unwise. The Commission currently is considering the best and most efficient allocation and use of AWS spectrum in other proceedings.[36] The wireless industry, the Commission, the National Telecommunications and Information Administration ("NTIA"), and leaders in Congress all have expressed interest in seeing the AWS-3 spectrum paired with 1.7 GHz spectrum to be reallocated from the Federal government, and NTIA is currently engaged in an investigation to determine whether a band of 1.7 GHz spectrum (currently allocated for Federal government use) can be reallocated to commercial use.[37] Such a pairing would enable the AWS-3 spectrum to be put to its best use as a mobile broadband spectrum band, which would

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[35] The Administrative Procedure Act requires agencies to give public notice of substantive rules it proposes to adopt, and to grant interested persons an opportunity to present their views on such matters. *See* 5 U.S.C. § 553(b). As the U.S. Court of Appeals for the D.C. Circuit recognizes, "the notice requirement 'improves the quality of agency rulemaking' by exposing regulations 'to diverse public comment,' ensures 'fairness to affected parties,' and provides a well-developed record that 'enhances the quality of judicial review.'" *Sprint Corp. v. FCC*, 315 F.3d 369, 373 (D.C. Cir. 2003), *quoting Small Refiner Lead Phase-Down Task Force v. United States EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

[36] *See Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band*, WT Docket No. 07-195; *Service Rules for Advanced Wireless Services in the 1915-1920 MHz 1995-2000 MHz , 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket No. 04-356.

[37] The most recent NTIA progress report regarding this investigation was released on October 17, 2011, and is available at http://www.ntia.doc.gov/files/ntia/publications/second_interim_progress_report_on_the_ten_year_plan_and_timetable.pdf.

serve not only the Commission's goals for the Mobility Fund, but also its goals for meeting broad national mobile broadband demand. The Commission should not make decisions in the context of the present reconsideration proceeding that could affect the larger issues pending in the other AWS proceedings.

As CTIA has argued in prior advocacy regarding the AWS-3 service rules, the Commission should adopt flexible rules that enable the AWS-3 spectrum to be put to its highest and best use, and avoid "designer allocations" that favor particular entities or business models.[38] By asking the Commission to reserve the AWS-3 spectrum for new entrants only, NTCH is proposing an equally troubling "designer assignment" of spectrum. CTIA opposes this proposal, and encourages the Commission not to make any decisions in this proceeding that would undermine the Commission's efforts to achieve an optimal pairing of the AWS-3 spectrum with spectrum in the 1.7 GHz band.

[38] *See, e.g.* Letter from Christopher Guttman-McCabe, Vice President, CTIA – The Wireless Association® to Kevin J. Martin, Chairman, FCC, WT Dkt. Nos. 07-195 and 04-356, at 3 (filed Dec. 22, 2008) ("There are significant issues regarding service and technical rules for the AWS-3 band that must be resolved if the band is to be used to successfully bring additional mobile wireless broadband services to market. CTIA urges the Commission to resolve these concerns and ensure that the spectrum is used to benefit U.S. wireless consumers most. That means flexible service rules that do not mandate a particular business model and technical rules that adequately protect adjacent licensees from harmful interference."); Letter from Brian Josef, Director, Regulatory Affairs, CTIA – The Wireless Association® to Marlene Dortch, Secretary, FCC, WT Docket Nos. 08-165, 07-195, 04-356, at 1 (filed Oct. 22, 2009) ("During the meeting, CTIA discussed the need for the AWS-3 spectrum to be brought to market expeditiously but also in a carefully considered plan. CTIA shared its views that the 1755-1780 MHz band should be reallocated for licensed CMRS use, paired with the 2155-2180 MHz spectrum and given flexible service rules that don't mandate a particular business model and technical rules that protect adjacent licensees from harmful interference.").

V. CONCLUSION

For the reasons discussed above, CTIA urges the Commission to address the pending Petitions seeking reconsideration and/or clarification of the *Order* consistent with these comments.

Respectfully submitted,

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